

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case No: 2:15-cr-20382

Honorable Victoria Roberts

Magistrate Judge Elizabeth Stafford

D-1 PAUL NICOLETTI,

Defendant.

Craig Weier
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**MOTION TO AMEND
ORDER OF RESTITUTION**

NOW COMES the Defendant, Paul Nicoletti, by and through his attorney, Paul Stablein, and moves this Honorable Court to amend the Court's February 3, 2020, restitution order, and in support of said motion, states as follows:

1. Mr. Nicoletti was convicted of one count of conspiracy to commit bank fraud and three counts of bank fraud following a jury trial that concluded on May 7, 2019.

2. He had been charged by way of a grand jury indictment entered on June 23, 2015.

3. On January 30, 2020, this Honorable Court sentenced Mr. Nicoletti to a term of incarceration of 70 months and further ordered that her pay restitution in the amount of \$5,479,151.58.

4. The judgement of sentence (Doc. # 168) further ordered that Mr. Nicoletti was to pay the restitution as follows: “Lump sum payments of \$5,479,151.58 (Special Assessment & Restitution) due immediately, balance due.” Mr. Nicoletti has no ability to pay the restitution as ordered by the Court. As the result of his conviction, Mr. Nicoletti’s license to practice law was suspended by the State Bar of Michigan.

5. On March 16, 2020, the Attorney Grievance Commission filed with the Michigan Attorney Discipline Board the docket entries and judgment of sentence from the within case, seeking an order to show cause why a final order of discipline should not be entered and setting the matter for a hearing before a panel of the board. A copy of the Notice of Filing of a Judgment of Conviction is attached hereto as **Exhibit A**. On information and belief, the Grievance Administrator will seek to permanently disbar Mr. Nicoletti from practicing law in the State of Michigan.

6. The United States Probation Department prepared a Presentence Investigation Report in which Agent Glaros stated, “The Defendant may have the

ability to make nominal monthly payments toward restitution if ordered.” See Page 11, Paragraph 45 of the Presentence Investigation Report. The report also informed the Court that Mr. Nicoletti, working as a tow truck driver, earned \$420.00 per week at the time of his sentencing.

7. Mr. Nicoletti cannot make a payment of a lump sum immediate payment of \$5,479,151.58. His inability to make such a large payment will undoubtedly put him in the position of being unable to comply with this Court’s judgment, and places him in the position of necessarily violating the conditions the Court has placed upon him as conditions of his supervised release.

8. The Court should also take note that none of the other defendants in this matter were ordered to make immediate lump sum payments. Copies of the judgments of sentence of defendants Hogan, Hance, Flynn and Lucia are attached hereto as **Exhibit B**.

9. 18 U.S.C. § 3664(f)(3)(B) authorizes a sentencing court to order the payment of nominal periodic payments “if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.” Those circumstances the Court is to take into consideration include “(A) the financial resources and other assets of the defendant, including whether any of

these assets are jointly controlled; (B) projected earnings and other income of the defendant; and (C) any financial obligations of the defendant; including obligations to dependents.” 18 U.S.C. § 3664(f)(2).

10. Mr. Nicoletti’s financial resources are minimal. He earns \$420.00 per week, and will not, within the next six years, be able to earn anything. His projected earnings following his release from prison at age 67 will in all likelihood not amount to much more. He will not, in the foreseeable future, be able to pay \$5,479,151.58, let alone make such a payment in one lump sum immediately.

WHEREFORE, Mr. Nicoletti requests that this court amend the order of restitution allowing for the payment of nominal payments as authorized by § 3664.

Respectfully submitted,

/s/Paul Stablein

Paul J. Stablein (P42544)

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Dated: March 17, 2020

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**BRIEF IN SUPPORT OF DEFENDANT'S
MOTION TO AMEND ORDER OF RESTITUTION**

As and for his Brief in Support of the above-captioned motion, Mr. Nicoletti incorporates those statements of fact and conclusions of law set forth in his concurrently filed motion as if the same were more fully set forth herein.

WHEREFORE, Mr. Nicoletti requests that this court amend the order of restitution allowing for the payment of nominal payments as authorized by § 3664.

Respectfully submitted,

/s/Paul Stablein

Paul Stablein

Attorney for Mr. Nicoletti

DATED: March 17, 2020